

Serial No. 10/582,313  
Response to Office Action mailed November 3, 2009

### **REMARKS**

#### **Status of Claims**

Claims 41-43 and 45-47 are in the present application. Claims 1-3, 7, 10-14, 16, 18, and 27-28 are withdrawn pursuant to a restriction requirement. Claims 4-6, 8-9, 15, 17, 19-26, 29-40 and 44 are cancelled. No amendments are made and no new matter is raised.

#### **Claim Rejections: 35 USC §112**

Claims 41-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. In particular, the Office states that the term "localized disturbances" used in claim 41 is not defined or mentioned in the specification. In fact, the priority application (US provisional application 60/527,898) at page 3, lines 26-27 states that "IMG activation provides localized stretching to create the disturbances in the nonwoven layer." In addition, Figure 2 of the priority application illustrates what is meant by the local disturbances in the nonwoven web created by IMG activation. Because the disclosure of the priority application has been incorporated by reference, Applicant is entitled to rely upon the terms and other disclosures contained therein.

Moreover, Applicant submits that the term localized disturbances would be readily understood by a skilled artisan in the context of the disclosure. Nonwoven webs are webs of randomly laid and bonded fibers. While variation occurs across the web due to the random orientation and placement of the fibers, the webs are generally homogeneous from one area to the next. Creating a localized disturbance in the web would be understood to mean creating a disruption of the fibers in a discrete area of the web, thus creating a non-homogeneous area in an otherwise homogeneous web. Such an understanding is consistent with Figure 2 of the priority application.

For the above reasons, Applicant submits that the claims are sufficiently definite and supported to satisfy the requirements of 35 USC §112. Reconsideration and withdrawal of the rejection is respectfully solicited.

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**Claim Rejections: 35 USC §102**

Claims 1-42 & 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Curro et al (WO 2000/37249) as evidenced by Benson, US 5,628,097 ("Benson") and Ahr, US 4,463,045 ("Ahr"). The Office position is that Curro teaches a fibrous nonwoven web/ elastic film laminate with a surface energy gradient in which the surface energy of the fibrous layer is lower than that of the film layer, wherein the layers are bonded together and are both apertured such that the apertures in the nonwoven layer expose the apertured film. The Office further states that, while Curro does not explicitly teach activation stretching, Curro incorporates Benson which teaches activation stretching as a method of creating apertures in a nonwoven web. Ahr, also incorporated by Curro, is relied upon as teaching vacuum aperturing of the film. The rejection is respectfully traversed.

Independent claim 41 recites that the fibrous web and the film are bonded together to form a unified structure and the unified structure is activation stretched to create the localized disturbances in the fibrous web to expose the film. Curro does in fact teach that the process of Benson can be used to create apertures in the nonwoven web. However, Curro specifically states that the nonwoven is apertured *before* it is bonded to the film. In fact, Curro states that the nonwoven web may be treated to lower the surface energy and then apertured, or preferably is apertured and then treated. *See* Curro at page10, second and third full paragraphs. In either case, the web is treated and apertured before it is bonded to the film.

Thus, even if the process of Benson were used to form the apertures in the nonwoven web of Curro, that combination would still not result in activation stretching of the composite. Because the features of claim 41 are not met by the teachings of Curro and Benson, the rejection based on 35 USC §102(b) is improper. Reconsideration and withdrawal of the rejection is respectfully solicited.

Nor would it be obvious to one skilled in the art to modify Curro and bond the nonwoven web to the film before activation stretching. Neither Curro nor Benson even hints at the aperturing the nonwoven after bonding to a film. In addition, the Benson process requires first forming weakened areas in the nonwoven by applying heat to melt or soften the nonwoven web. Because nonwoven webs are typically made of polypropylene, which has a higher melting point than the polyethylene used to make the film layer, one skilled in the art would not be motivated

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to use Benson's process on a composite for fear of destroying the film. Moreover, activation stretching of the composite, as opposed to the nonwoven alone, requires additional energy if for no other reason that the thickness of the material being activated is increased. That additional energy raises concerns regarding delamination of the film from the nonwoven, destruction of the film layer, destruction of the nonwoven layer, tearing, and/or other damage to the composite. Accordingly, there is no reasonable expectation by those skilled in the art that the Benson process would have the desired result if applied to a composite as opposed to the nonwoven web alone.

For these reasons, Applicant submits that the combination of Curro and Benson does not render claim 41 obvious.

Regarding the rejections of claims 42 and 45-47, those claims all depend from and further limit claim 41. Accordingly, such dependent claims are also believed to be allowable. In addition, Ahr does not mention the terms "activation", "stretch", "IMG" or "intermeshing" and thus does not cure the fundamental deficiencies noted above regarding Curro and Benson. Thus, the addition of the teachings of Ahr does not alter the analysis or conclusions presented above.

**Claim Rejections: 35 USC §103**

Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curro et al. (WO 2000/37249) in view of Thomas (U.S. Pat. 6,242,074). The Office position is that Curro teaches a fibrous nonwoven web/ elastic film laminate with a surface energy gradient in which the surface energy of the fibrous layer is lower than that of the film layer, wherein the layers are bonded together and are both apertured such that the apertures in the nonwoven layer expose the apertured film. The Office further states that Curro does not teach vacuum lamination, but relies on the disclosure of Thomas of bonding a nonwoven web with slits to a film in a vacuum lamination process. The rejection is traversed.

First, claim 44 is cancelled so the rejection is moot as to that claim. As to claim 43, that claim depends from and further limits claims 41, which is patentable over the art for the reasons noted above. Thomas does not teach activation stretching of a composite material and does not contain the words "stretch", "activation", "IMG" or "intermeshing" and thus does not cure the deficiencies of Curro and Benson noted above.

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Second, the Office is misreading Thomas. Contrary to the Office position, Thomas does not teach bonding of a nonwoven web having slits to a film. Instead, Thomas teaches that a nonwoven can be applied to selected areas of the film by slitting a roll of nonwoven fabric and applying the strips of nonwoven fabric to selected areas of the film. Thus, the reference in Thomas that the nonwoven is "slit" means that a width of material is cut into thinner strips, not that discrete slits are formed in an otherwise intact web.

Third, even if the Office interpretation of Thomas were accurate, the combination still fails to meet the claimed features. In particular, if read according to the Office interpretation, Thomas would teach the artisan to make discrete slits in the nonwoven and then bond the nonwoven to the film using a vacuum lamination process. The instant claims recite that the nonwoven is bonded to the film to form a unified structure and the unified structure is then activation stretched to form the localized disturbances in the web. Accordingly, the combination of Curro and Thomas suffers from the same deficiencies as the Curro/ Benson combination noted above.

For the reasons stated above, claim 43 is not render obvious by the combination of Curro with Thomas. Reconsideration and withdrawal of the rejection is respectfully solicited.

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For the reasons stated above, claims 41-43 and 45-47 define patentable subject matter and the references of record do not teach, disclose or suggest the composite recited therein. Reconsideration and withdrawal of all claim objections and claim rejections is solicited, as is a notice of allowance with respect to the claims under prosecution.

Upon the indication of allowable subject matter, Applicant will seek to rejoin the withdrawn claims and amend those claims to conform in scope to the allowed claims.

If the Office is not inclined to allow the claims in their current form, the Examiner is invited to contact the undersigned attorney by telephone to discuss the speedy resolution of any remaining issues. Moreover, even if the Office is not inclined to allow the claims, entry of the amendment is respectfully requested because it eliminates the issues regarding claim 44 and thus simplifies the issues for appeal.

Respectfully Solicited,



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